Office Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

in the Supreme Court of the United States

OCTOBER TERM, 1969

No. 597

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

THEODORE M. TRUSHIN
Attorney for Petitioner,
420 Lincoln Road
Miami Beach, Florida

MIAMI REVIEW — 371-4853 — 377-3721

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in the
Supreme Court
of the
United States

OCTOBER TERM, 1969

No. _____

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

To: The Chief Justice and the
Associate Justices of the
Supreme Court of the United States

Your petitioner, FRANK CONROY, hereby petitions for a writ of certiorari to review the decision of the Supreme Court of the State of Florida denying your petitioner a writ of certiorari to review an order of the Circuit Court for Dade County, Florida, bearing the date of June 12, 1968, affirming the judgment of the Munici-

pal Court of Miami Beach, in its conviction of your petitioner for having resisted arrest as charged pursuant to the Code of the City of Miami Beach, Florida, by refusing to go to the police station with a police officer following being stopped for a traffic violation.

OPINIONS BELOW

The opinion of the Supreme Court, State of Florida, denying petitioner's writ of certiorari to the District Court of Appeal, Third District, State of Florida, was made and entered on May 9, 1969 and is included in the attached Appendix as (App. 1). The opinion of the Supreme Court of Florida denying petitioner's petition for rehearing of consideration of his petition for writ of certiorari was made and entered on June 16, 1969 and is included in the attached Appendix as (App. 2).

The District Court of Appeal, Third District, in its per curiam opinion denying petitioner issuance of a common law writ of certiorari is reported as 217 So.2d 164 (1968) and a copy of said decision is included in the attached Appendix as (App. 3).

JURISDICTION

The order sought to be reviewed was made and entered on May 9, 1969. An order denying a timely motion for rehearing was made and entered on June 16, 1969. The statutory provision believed to confer this Court jurisdiction to review the judgment in question is 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not a petitioner has a constitutionally right guaranteed by the 14th Amendment to the United States Constitution to call his attorney at the time of his arrest but before being taken to the police station.

2. Whether, when the petitioner attempts to call his attorney immediately following his arrest, but before being taken to the police station, is he guilty of resisting arrest in violation of a municipal Code provision, or, does he have a constitutional right, guaranteed by the 14th Amendment to the U.S. Constitution to call his attorney at that time without being guilty of resisting arrest by his attempt to make such a call?

3 Whether or not petitioner has a right to resist an arrest by exercising a constitutional right guaranteed him by the 14th Amendment to the U.S. Constitution, by refusing to go to the police station voluntarily with the police officer following his arrest until such time as he would be allowed to telephone his attorney.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, U.S. Constitution, Section 1, clause 2: " . . . nor shall any State deprive any person of life, liberty, or property without due process of law. . . . "

STATEMENT OF THE CASE

The following facts of the case pertinent to jurisdiction are supported by citations to the accompanying certified copies of the record with the pagination as appears in the Index at the beginning of the Appendix and are as follows:

On March 8, 1967, at approximately 8:00 P.M., the Arresting Officer saw petitioner driving his taxi cab along Ocean Drive, and believed him to be driving at an excessive rate of speed of forty-three (43) miles per hour in a twenty (20) mile per hour zone, (App. 8). He followed petitioner from approximately 14th Street to approximately 8th Street along Ocean Drive, and then petitioner got ahead of him, due to a red light and he caught up with him at the Sinclair station known as Bobby's Service Station located at the Southeast corner of the intersection of 7th Street with Collins Avenue on Miami Beach, Dade County, Florida, (App. 8-9).

The officer informed petitioner that he was charging him with a speeding violation and asked and obtained the driver's license and proceeded to write out a ticket, while petitioner orally protested that he was not guilty of having violated the law (App. 9). When the officer had completed writing out the ticket he asked petitioner to sign it, and petitioner refused, although the officer did explain to petitioner that the signing of the ticket did not convey an acknowledgement of guilt, but was merely a promise to appear before the Metro Court to be tried on the charge of speeding, (App. 9). Petitioner believed it did convey an acknowledgment of guilt, and therefore, refused to sign it, (App. 9). The officer then told peti-

tioner that petitioner would have to follow him to the Police Station, so that he could post a bond to insure his appearance in Court, (App. 10). Although there is some controversy at this point as to what was actually said, both parties admit that petitioner did state that he was going into the filling station office to call a lawyer, and proceeded to walk into the station, (App. 10). At the phone, petitioner started to dial and the officer put his hand on the phone base, disconnecting the telephone call and informed petitioner that he could make his call at the Police Station after he was charged, (App. 10). Both parties admit that the officer pulled petitioner from the phone and from the filling station office into the service area of the filling station by means of a handcuff attached to one of the wrists of petitioner, (App. 10). A fight then took place in which the officer admittedly was the aggressor although there is controversy as to whether such aggression was necessary, and in the fighting, which was all on the part of the officer, and without any retaliation by petitioner, petitioner did suffer a cut on the head (App. 10, 12). The officer then called squad cars and several showed up and petitioner was then taken to the Police Station and charged, (App. 11) posted bond and released, (App. 11). The officer further testified that it was his intention when petitioner did not agree to go to the station with him, to call for squad cars to come on his motorcycle radio and that he did not propose to use the phone and that he knew that it would be a few minutes before the squad cars would arrive and further that he realized that petitioner was not escaping from him when he went into the station office as there was no place to go and petitioner's car was still parked in the station being serviced, (App. 11-12, 22).

After being charged, a warrant was issued, (App. 5), and served upon petitioner charging him with a violation of Section 25-66, of the Code of the City of Miami Beach, Florida, to wit: "Obstructing officers in exercise of duties did then and there knowingly and wilfully resist, obstruct, or oppose a duly appointed, qualified, and acting police officer of the City of Miami Beach, Florida, in the lawful execution of a legal duty being performed by him, to wit: bringing subject to station to post bond on traffic violation, subject resisted and refused to accompany officer."

Subsequently, a trial was held before the Honorable Alfred F. Nesbitt, one of the Judges of the Municipal Court of the City of Miami Beach, Dade County, Florida, on May 10, 1967, at or about 3:00 P.M., (App. 7).

At the trial the testimony of the witnesses revealed that there was a fight in which the arresting officer was the aggressor; that he had refused to allow petitioner to make the telephone call to his attorney, and had pulled him away from the telephone; that petitioner had not offered any active resistance to the Officer during these proceedings nor any physical violence to the Officer, but had merely stated his desire to call an attorney, and had refused to cooperate with the officer in placing handcuffs upon both of his hands, (App. 10-14).

The only witness upon the scene during the period in which these events occurred witnessed petitioner pulling into the service station, (App. 14), where he worked as a service attendant, followed by the officer, on a motorcycle, (App. 15); that while he serviced petitioner's cab,

the officer accused petitioner of speeding, (App. 15), and petitioner debated the charge with the officer, both talking calmly; the officer filled out the speeding ticket, with the information on petitioner's driver's license, which petitioner had given him, but petitioner refused to sign the ticket, and went into the station to make a phone call, the officer interrupted the call by placing his hand on the phone, and pulled petitioner from the phone, at which time, while he was being dragged out of the station, petitioner asked the witness to make a call, but apparently due to the confusion, a wrong number was given the witness, and he was unable to make the call requested by petitioner, (App. 15-22). The witness definitely did not overhear any of the discussion between petitioner and the officer, but he did state that the conversation was calm and collected and never seemed to be what he might have called bitter argument. Furthermore, petitioner never offered any show of physical violence to the officer, according to the witness, (App. 20-22). This is also confirmed by the officer's own testimony, (App. 13).

The Judge also requested that your petitioner submit a memorandum of law on the relevant issues involved in his case. In it your petitioner pointed out that " . . . The officer, in fact, violated the fundamental right of the defendant to seek counsel as provided . . . by the United States Constitution." Also it was stated that "The defendant should have been permitted to call his attorney regardless of whether an arrest had been made or was about to be made by the police officer under the laws of the State of Florida and of the United States of America. (App. 24-26).

On June 7, 1967, the trial Court adjudicated the petitioner guilty of violating Section 25-66 of the Code of the City of Miami Beach, Florida, (App. 5), and thereafter appeal was timely filed to the Circuit Court of the Eleventh Judicial Circuit of Florida, In and For Dade County, Florida, and was assigned Criminal Appeal No. 6335.

On the foregoing facts, the Circuit Court was presented with the following three points of law:

1. Whether or not a petitioner resists arrest in violation of the Code of the City of Miami Beach, Florida, by refusing to go to the police station voluntarily with the police officer following his arrest.

2. Whether or not a petitioner has a constitutional right, guaranteed by the 14th Amendment to the United States Constitution to call his attorney at the time of his arrest, but before being taken to the police station.

3. Whether the petitioner attempts to call his attorney immediately following his arrest but before being taken to the police station, is he guilty of resisting arrest in violation of the Code of the City of Miami Beach, Florida, or does he have a constitutional right guaranteed by the 14th Amendment to the United States Constitution to call his attorney at that time without being guilty of resisting arrest by his attempt to make such call. (Assignments of Error in Criminal Appeal to Circuit Court, (App. 27).

After all appellate pleadings, briefs and oral argument, the Circuit Court affirmed the Municipal Court's finding and sentence on June 12, 1968, (App. 29), and denied the Petition for Rehearing on July 18, 1968, (App. 30). The Circuit Court in its order denying petition for Rehearing found that "1. Due process of law and the right to a fair trial as well as right to counsel as guaranteed by the 14th Amendment to the United States Constitution, . . . do[es] not encompass any constitutional right of a person to make a telephone call at the time of his arrest, but before being taken to the police station. 2. The trial court was eminently correct in entering its judgment of conviction and sentence adjudicating that Defendant-Appellant resisted arrest as charged . . . by refusing to go to the police station with the police officer following his arrest." (App. 30-31).

Thereafter, a Petition for a Common Law Writ of Certiorari to the Circuit Court of the Eleventh Judicial Circuit of Florida, In and For Dade County was timely and properly filed in the District Court of Appeal of Florida, Third District and was assigned case no. 68-826.

As the case at bar involved an alleged violation of a municipal ordinance, and at most the application rather than the construction of federal constitutional provisions, no direct review (of the municipal court's criminal conviction) by the Florida Supreme Court was possible and the appeal below, resulting in the affirmance herein sought to be reviewed, was properly taken to the Circuit Court.

The same three (3) points of law had been answered in the affirmative, i.e., in conformation with petitioner's

contentions by Federal decisions concerning the 14th Amendment to the Constitution of the United States and said Amendment guarantees the due process of law, the right to a fair trial, and the right to counsel; thus, the decisions and Orders of the Circuit Court below deviated from essential requirements of law as follows, as stated in petitioner's petition for a common law writ of certiorari (App. 32-33).

1. It was contrary to essential requirements of the law to affirm petitioner's conviction because the petitioner did not violate the Code of the City of Miami Beach, Florida and did not resist arrest by refusing to go to the police station voluntarily with the police officer following his arrest.

2. It was contrary to essential requirements of the law to affirm petitioner's conviction of violating the Miami Beach ordinance because a petitioner in custody is entitled to immediately consult with or be advised by his attorney when he has made such representation known to the officer arresting him.

3. It is contrary to the essential requirements of the law to affirm petitioner's conviction because he was convicted of resisting arrest in violation of the Code of the City of Miami Beach, Florida, by attempting to call his attorney after he was arrested for speeding and before he was taken to the police station since the resistance consisted of refusing to obey the officer's command not to call his attorney.

Thereafter the District Court heard oral argument on December 9, 1968.

The District Court affirmed the action below with the opinion filed December 19, 1968, (App. 34).

Petition for Rehearing was denied by the District Court on January 8, 1969. (App. 35).

Thereafter on the 20th day of January, 1969, your petitioner filed his petition for a writ of certiorari to the District Court of Appeal of Florida, 3rd District in the Supreme Court of the State of Florida and was given Case no. 38,232.

The constitutional questions herein were raised in the above petition for writ of certiorari. In addition to attempting to establish jurisdictional grounds for the Supreme Court to issue the writ of certiorari, constitutional questions were raised more specifically on page 8 of petitioner's petition, wherein your petitioner pointed out that the decision of the District Court of Appeal, 3rd District, in affirming the Circuit Court's affirmance of the Municipal Court's finding of petitioner guilty of resisting arrest was in conflict with certain appellate decisions and decisions of the Supreme Court of Florida in regard to "due process" requirements of the United States Constitution which may be violated by failure to furnish counsel at certain stages of the investigatorial and accusatorial processes.

In addition your petitioner pointed out to the Supreme Court of Florida that the District Court of Appeal, 3rd District, decision in this cause violated the principle

and constitutional right that a person not under arrest is entitled to an attorney whenever he requests same as held in **Escobedo v. Illinois**, 378 U.S. 478 (1964). (Petition for writ of certiorari, page 9, App. 36-39).

In addition, petitioner attempted to show (App. 38) that in fact your petitioner was not under arrest at the time he attempted to make a call to his attorney.

The Supreme Court of Florida ordered that petition for writ of certiorari be denied with the opinion filed May 9, 1969 (App. 1).

Petition for Rehearing was denied by the Supreme Court of Florida on June 16, 1969 (App. 2). The same ending the tolling of time of the final judgment in this cause.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because the writ of your petitioner to obtain counsel when he is confronted with the possibility of being in violation of the law was denied by the actions taken by the courts herein involved.

The decision which in fact denied your petitioner his rights guaranteed under the 14th Amendment to the United States Constitution occurred with the Municipal Court finding your petitioner guilty of resisting arrest. This, in fact, made it a crime for your petitioner to assert

his constitutional rights to secure the assistance of counsel in a critical stage in the proceedings in this cause in a situation where neither factors of safety nor expediency necessitated a denial of those rights. The Circuit Court, on appeal from this decision affirmed the decision of the Municipal Court and definitively stated in its Order for Denying Petition for Rehearing its reasons:

> There is no constitutional right to call an attorney at the time of arrest but before being taken to a police station, and that an attempt to do so constitutes resisting arrest, violation of the Municipal Code.

The District Court of Appeal, 3rd District, refused to issue a common law writ of certiorari to the Circuit Court from this decision, as did the Supreme Court of Florida deny the granting of a writ of certiorari to said District Court of Appeal to review its decision. In this way, through the orderly process of review as prescribed by the statutes of the State of Florida, your petitioner was denied his statutory right of counsel at a critical stage in his adjudication.

This Court has an affirmative responsibility to correct not only your petitioner's denial to his constitutional rights, but to establish a definitive guide line concerning the extent to which a person being investigated, accused or in custody for a crime or other violation of law, is entitled to the assistance of an attorney, and to what extent he should be allowed to pursue the obtaining of said assistance. There are cogent reasons why this Court should issue a writ of certiorari and they are as follows:

POINT ONE

THE DENIAL OF A PERSON IN CUSTODY TO TELEPHONE HIS ATTORNEYS FOR PURPOSES OF CONSULTATION OR TO DETERMINE WHETHER HIS FUTURE ACTIONS WOULD CONSTITUTE A VIOLATION OF LAW, AT THE TIME SUCH PERSON HAS BECOME FOCAL POINT OF THE INVESTIGATORIAL PROCESS OR IN FACT IS UNDER ARREST IS A VIOLATION OF "DUE PROCESS" AS GUARANTEED UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

At the point where an investigation ceases to be a general enquiry into a violation of law, the denial of counsel to the accused amounts to a denial of due process under the 14th Amendment to the United States Constitution which incorporates the 6th Amendment right to counsel. **Escobedo v. Illinois,** 378 U.S. 478 (1964). This is especially true in the petitioner's case wherein the very denial of petitioner's request to contact his attorney was, in fact, a cause leading to the ensuing struggle which in turn led to his conviction for resisting arrest. There are numerous cases in addition which indicate that where there is no salient reason to deny the request for immediate consultation with counsel when the accused is first taken into custody there is a denial of due process under the Constitution. (See **State v. Krozel,** 24 Conn. Supp. 66, 190 A.2d 61 (1963).

Hamilton v. State of Alabama, 368 U.S. 52 devised the test which determines that the right to counsel attaches at any "critical stage in a criminal proceeding". It is submitted that there can be no more critical stage than that with which your petitioner was confronted. Had he been allowed the assistance of counsel as per his request no criminal violation of law would have resulted as there would have been no resistance on his part. Speaking on when such critical stage is present in **City of Tacoma v. Heater**, 400 P.2d 867 (1966) the Supreme Court of Washington **En Banc** stated that it was **"no later** than the moment when, immediately after the police officers had conducted their tests . . . and had interrogated the defendant, they charged him with the offense." Likewise was the plight of your petitioner. Not only was his preparation of his defense hampered by the absence of counsel at this critical stage, but the very creation of the crime took place because of it. A defendant's right to be heard through his own counsel is unqualified. **Chandler v. Fretag**, 348 U.S. 3. Various decisions of this Court strongly mitigate in favor of establishing more definitive announcement on when right of counsel attaches and under what circumstances; **Gideon v. Wainwright**, 372 U.S. 335 (1963), **Miranda v. Arizona**, 384 U.S. 436 (1966), **Douglas v. California**, 372 U.S. 353 (1963), **In re Gault**, 387 U.S. 1 (1967).

In addition, the American Bar Association Special Committee's Minimum Standards for the Administration of Criminal Justice formulated certain Standards including Standard 5.1 which in part reads, "counsel should be provided to the accused as soon as feasible after he is taken into custody, when he appears before a committing magistrate or when he is formally charged, **whichever occurs earliest."**

POINT TWO

A CITIZEN SHOULD NOT BE PENALIZED BECAUSE OF HIS ATTEMPTED EXERCISE OF HIS CONSTITUTIONAL RIGHTS.

In this cause the petitioner attempted to exercise his constitutional right and obtain counsel at a critical stage in the proceedings. The attempted exercise of this right resulted in him ultimately being convicted of resisting arrest. Recent decisions of this Court indicate that the failure to obey the command of a police officer cannot be punished if that command violates the Constitution. **Wright v. State of Georgia**, 372 U.S. 284. This is moreover true when the exercise of such right does not create a breach of the peace other than the mere resisting of arrest. **Briggs v. State of Arkansas,** 367 S.W.2d. 750.

In addition, this Court's pronouncements indicate that an accused should not be penalized for asserting his constitutional rights. In this case, the result of petitioner attempting to assert his constitutional right of the assistance of counsel resulted in his conviction for resisting arrest. **Griffin v. California,** 380 U.S. 609, **Winters v. Beck,** 385 U.S. 907.

Such actions are condemned by the due process clause of the 14th Amendment to the United States Constitution. To say that the petitioner's action in attempting to protect his constituional rights under the circumstances involved in this case constituted the offense of resisting arrest would effectively deprive the petitioner of those constitutional rights. **See Cox v. State of Louisiana,** 379 U.S. 551 (1965).

Questions presented by this case are of great and reoccurring significance in the establishment of constitutional guarantees in criminal law. The important nature of these points has already been recognized by this Court in such cases as **Escobedo v. Illinois, supra.** The opportunity for this Court to effectively establish definitive criteria in the area of right to counsel makes this case a particularly appropriate one for the exercise of the Court's discretionary jurisdiction.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari be granted.

Respectfully submitted,

THEODORE M. TRUSHIN
Attorney for Petitioner
420 Lincoln Road Mall
Miami Beach, Florida

CERTIFICATE OF SERVICE

I, THEODORE M. TRUSHIN, a Member of the Bar of the Supreme Court of the United States, hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari and Appendix was mailed to the HONORABLE EARL FAIRCLOTH, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida; the HONORABLE SID WHITE, Clerk, Supreme Court of the State of Florida, Supreme Court Building, Tallahassee, Florida, and the HONORABLE JOSEPH WANICK, City Attorney for the City of Miami Beach, Florida, Attn: IRA ELEGANT, Assistant City Attorney, 1130 Washington Avenue, Miami Beach, Florida, this 12th day of September, 1969.

Respectfully submitted,

THEODORE M. TRUSHIN
Attorney for Petitioner
420 Lincoln Road Mall
Miami Beach, Florida

APPENDIX

APPENDIX

IN THE SUPREME COURT OF FLORIDA
January Term, A. D. 1969

Friday, May 9, 1969

CASE NO. 38,232

DISTRICT COURT OF APPEAL, THIRD DISTRICT
FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
Sid J. White
Clerk Supreme Court.
(SEAL)

cc: Honorable William P. Carter
Honorable E. B. Leatherman
Honorable Theodore M. Trushin
Honorable Joseph A. Wanick

App. 2

IN THE SUPREME COURT OF FLORIDA

January Term A.D. 1969

Monday, June 16, A.D. 1969

CASE NO. 38,232

FRANK CONROY,

Petitioner

-vs-

CITY OF MIAMI BEACH, FLORIDA,

Respondent

Petition for Rehearing filed by Attorney for Petitioner has been considered and is hereby denied.

A TRUE COPY
TEST:
SID J. WHITE
CLERK SUPREME COURT
(SEAL)

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, ORDER OF MAY 9, 1969 IN THE ABOVE CAUSE.

---

164 Fla. 217 SOUTHERN REPORTER, 2d SERIES

3

Frank CONROY, Petitioner,

v.

CITY OF MIAMI BEACH, Florida,
Respondent.

No. 68-826.

District Court of Appeal of Florida.
Third District.

Dec. 19, 1968.

Rehearing Denied Jan. 8, 1969.

Appeal from Circuit Court, Dade County; David Popper, Judge.

PER CURIAM.
Certiorari denied.

IN THE NAME OF THE CITY OF MIAMI BEACH, FLORIDA

CITY OF MIAMI BEACH,
COUNTY OF DADE
STATE OF FLORIDA

WARRANT

Docket Case No. [redacted]
Complaint No. 212225

TO THE CHIEF OF POLICE or any Policeman of aforesaid City:

WHEREAS [redacted] has this day made oath before the City Clerk of the City of Miami Beach, Florida that one Frank Conroy on the 8 day of [redacted] A.D. 19 67 at and in the aforesaid City, did then and there violate Section 25-66 of the Code of the City of Miami Beach, Florida.

To Wit: OBSTRUCTING OFFICERS IN EXERCISE OF DUTIES

DID THEN AND THERE KNOWINGLY AND WILFULLY RESIST, OBSTRUCT, OR OPPOSE A DULY APPOINTED, QUALIFIED, AND ACTING POLICE OFFICER OF THE CITY OF MIAMI BEACH, FLORIDA, IN THE LAWFUL EXECUTION OF A LEGAL DUTY BEING PERFORMED BY HIM, TO WIT: BRINGING SUBJECT TO STATION TO POST BOND ON TRAFFIC VIOLATION, SUBJECT RESISTED AND REFUSED TO ACCOMPANY OFFICER.

and WHEREAS, there is cause to believe that said complaint is well founded, these are therefore to command you forthwith to arrest one Frank Conroy and bring him before me at the Municipal Courtroom in the City of Miami Beach, Florida, at 2:1 o'clock on the 20 day of March A.D. 19 67, to be dealt with according to law.

Given under my hand and the Seal of the City of Miami Beach, Florida, this 8 day of March A.D. 19 67

ATTEST: RUTH ROULEAU
City Clerk, City of Miami Beach, Florida

By: [signature]
Deputy City Clerk

Alfred L. Lubert
Municipal Judge

AFFIDAVIT

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA

CITY OF MIAMI BEACH,
COUNTY OF DADE
STATE OF FLORIDA

AFFIDAVIT

Docket Case No. 129939
Complaint No. 212225

Before me, the undersigned authority duly authorized to administer oaths in and for the City of Miami Beach, Florida, personally came Off. Road [redacted] who being duly sworn, deposes and says that one Frank Conroy on the 8 day of March A.D. 19 67 at and in the aforesaid City, did then and there violate Section 25-66 of the Code of the City of Miami Beach, Florida.

To Wit: OBSTRUCTING OFFICERS IN EXERCISE OF DUTIES

DID THEN AND THERE KNOWINGLY AND WILFULLY RESIST, OBSTRUCT, OR OPPOSE A DULY APPOINTED, QUALIFIED, AND ACTING POLICE OFFICER OF THE CITY

OF MIAMI BEACH, FLORIDA, IN THE LAWFUL EXECUTION OF A LEGAL DUTY BEING PERFORMED BY HIM, TO WIT: BRINGING SUBJECT TO STATION TO POST BOND ON TRAFFIC VIOLATION, SUBJECT RESISTED AND REFUSED TO ACCOMPANY OFFICER.

and WHEREAS, there is cause to believe that said complaint is well founded, these are therefore to command you forthwith to arrest one Frank Conroy and bring him before me at the Municipal Courtroom in the City of Miami Beach, Florida, at 2:1 o'clock on the 9 day of March A.D. 19 67, to be dealt with according to law.

Given under my hand and the Seal of the City of Miami Beach, Florida, this 8 day of March A.D. 19 67

ATTEST: RUTH ROULEAU
City Clerk, City of Miami Beach, Florida
By: Deputy City Clerk

Alfred F. Lambert
Municipal Judge

AFFIDAVIT

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA

CITY OF MIAMI BEACH,
COUNTY OF DADE
STATE OF FLORIDA

AFFIDAVIT

Docket Case No. 129939
Complaint No. 212225

Before me, the undersigned authority duly authorized to administer oaths in and for the City of Miami Beach, Florida, personally came Off. Road who being duly sworn, deposes and says that one Frank Conroy on the 8 day of March A.D. 19 67 at and in the aforesaid City, did then and there violate Section 25-66 of the Code of the City of Miami Beach, Florida.

To Wit:

OBSTRUCTING OFFICERS IN EXERCISE OF DUTIES

DID THEN AND THERE KNOWINGLY AND WILFULLY RESIST, OBSTRUCT, OR OPPOSE A DULY APPOINTED, QUALIFIED, AND ACTING POLICE OFFICER OF THE CITY OF MIAMI BEACH, FLORIDA, IN THE LAWFUL EXECUTION OF A LEGAL DUTY BEING PERFORMED BY HIM, TO WIT: BRINGING SUBJECT TO STATION TO POST BOND ON TRAFFIC VIOLATION, SUBJECT RESISTED AND REFUSED TO ACCOMPANY OFFICER.

contrary to and against the ordinance of said City of Miami Beach in such case made and provided and against the peace and dignity of the City of Miami Beach.

(Affiant) 5:15 P.M. (Time)

Sworn to and subscribed before me this 9 day of March A.D. 19 67

RUTH ROULEAU
City Clerk, City of Miami Beach, Florida

(Seal)

By: GERALD VASTOLA Deputy Clerk

114

R-5

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA — TRIAL DOCKET CASE

THE STATE OF FLORIDA,
COUNTY OF DADE,
CITY OF MIAMI BEACH, PLAINTIFF,

vs.

CONROY, Frank
DEFENDANT

CODE 25-66 CHARGE OBSTRUCTING OFFICERS IN EXERCISE OF DUTIES: Did then and there, on March 8th, 1967, knowingly and willfully resist, obstruct, or oppose a duly appointed, qualified, and acting police officer of the city of Miami Beach, Florida, in the lawful execution of a legal duty being performed by him, TO WIT: Bringing subject to station to post bond on traffic violation, subject resisted and refused to accompany officer.

COMPLAINANT _____ ARRESTED BY Off. Reed

DEFENDANT CALLED FOR TRIAL at _____ on the ____ day of _____ A. D. 19____ and not answering or appearing, IT IS THEREFORE ORDERED AND ADJUDGED that the Bond of said Defendant be and it is HEREBY FORFEITED.

FORFEITURE SET ASIDE this ____ day of _____ A. D. 19____ for good and proper cause shown.

DEFENDANT ARRAIGNED FOR TRIAL on the ____ day of _____ A. D. 19____ and Defendant entered a PLEA of Not Guilty to the charge. THE COURT having heard and duly considered the evidence, finds the said Defendant is Guilty of said charge; and IT IS HEREBY ORDERED AND ADJUDGED that the said Defendant is Guilty of said charge and IT IS THE SENTENCE OF THE COURT that said Defendant pay a FINE OF $50.00 and $4.00 COURT COSTS and in default of such payment stand committed to JAIL of said CITY for a TERM of 10 days. IT IS FURTHER ORDERED AND ADJUDGED that said Defendant be committed to JAIL of said City for a TERM of ____ days. IT IS FURTHER ORDERED AND ADJUDGED that _____ of above SENTENCE shall be suspended on condition _____

MOTION TO QUASH _____ ____/____/____ STAY OF EXECUTION GRANTED until ____/____/____

MOTION TO SUPPRESS THE EVIDENCE FOR UNREASONABLE SEARCH AND/OR SEIZURE _____

MOTION FOR DIRECTED VERDICT _____ ISSUE BENCH WARRANT, SET BOND AT $ 100.00 A.F.H.

MOTION FOR NEW TRIAL _____ ____/____/____ SUPERSEDEAS BOND SET AT $ 150.00 A.F.H.

NOLLE PROSSED _____ Assistant City Attorney

REMARKS. May 1st exhibit fines. May 22 - submitted to Ct. - Allen. May 24. all dates ext. 2 weeks.

DONE, ORDERED AND ADJUDGED IN OPEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this 7 day of June A. D. 1967

ATTEST: J. Wayne Kerling
Deputy Clerk of the Court

Alfred F. Ehrlich
Municipal Judge

CASE REOPENED ____/____/____ and balance of sentence suspended on condition _____

CASE REOPENED ____/____/____ and condition of sentence is hereby changed to _____

Counsel for Defendant Theodore M. Travis 532-4901 Court Recorder Metro Court Reporters - C. T. Lloyd

Case continued until
3-10-67 2-20 PM 3-19 PM 4-26 5-30 PM. Last minute 3 PM (5-24 FOR PRESENT) - 6-7 PM.

D FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA — TRIAL DOCKET CASE — Nº 129099

IFF. / NT

CODE 25-66 CHARGE OBSTRUCTING OFFICERS IN EXERCISE OF DUTIES: Did then and there, on March 8th, 1967, knowingly and willfully resist, obstruct, or oppose a duly appointed, qualified, and acting police officer of the city of Miami Beach, Florida, in the lawful execution of a legal duty being performed by him, TO WIT: Bringing subject to fic violation, subject resisted and refused to accompany officer.

ARRESTED BY Off. Reed

at _____ on the ____ day of _____ A. D. 19____ and not answering or
ND ADJUDGED that the Bond of said Defendant be and it is HEREBY FORFEITED.
____day of _____ A. D. 19____ for good and proper cause shown.
AL on the ____ day of _____ A. D. 19____ and Defendant entered a PLEA of
e. THE COURT having heard and duly considered the evidence, finds the said Defendant is Guilty
D AND ADJUDGED that the said Defendant is Guilty of said charge and IT IS THE
endant pay a FINE OF $50.00 and $4.00 COURT COSTS and in default of such payment stand
d 10 days. IT IS FURTHER ORDERED AND ADJUDGED that said Defendant be committed to JAIL of said
URTHER ORDERED AND ADJUDGED that _____ of above SENTENCE

____ ____/__/__ ____ STAY OF EXECUTION GRANTED until __/__/__
CE FOR UNREASONABLE SEARCH AND/OR SEIZURE 108.00 A-7 th
____ ____ ISSUE BENCH WARRANT, SET BOND AT $ 108.00 A-7 th
____ ____/__/__ ____ SUPERSEDEAS BOND SET AT $ 150.00 A-7 th
_____, Assistant City Attorney
ed. May 29 - submitted to Ct. - Rec. May 24. all data ent. 2 mailed.

PEN COURT AT MIAMI BEACH, DADE COUNTY, FLORIDA, this 7 day of June A. D. 1967

Lynne Keating — Deputy Clerk of the Court
Alfred F. Lushbaugh — Municipal Judge

and balance of sentence suspended on condition _____
and condition of sentence is hereby changed to _____
TRANSN 552-4901 Court Recorder MEMO COURT REPORTERS - C. F. LLOYD

FM 4-26 5:30PM. Lastnotice 3FM (5-24 FOR DISPOSITION) - A-7FM.

C #212226
A #
BOND $ 20.00
CASH 17919
SURETY ____
SUMMONS ____
"OR" ____
FINE $ ____
COSTS $ ____
FORFEITURE $ ____
JAIL ____
DISMISSED ____
NOT GUILTY ____
NOLLE PROSSE ____
SUSPENDED ____

115

Stay execution
to June 9/67 - 4:30pm
A-7th.

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, FLORIDA

Case No. 129939

CITY OF MIAMI BEACH, FLORIDA,

Plaintiff,

-vs-

FRANK CONROY,

Defendant.

Excerpts from transcript of proceedings had and testimony taken in the above-entitled cause before the Honorable ALFRED F. NESBITT, at the Miami Beach Municipal Court, Miami Beach, Florida, on the 10th day of May, 1967, commencing at or about 3:00 o'clock P.M.

APPEARANCES:

MILTON ROBBINS, ESQ.,
City Prosecutor,

appearing on behalf of the Plaintiff.
THEODORE M. TRUSHIN, ESQ.,
appearing on behalf of the Defendant.

* * *

BY MR. ROBBINS:

Q. Please state your name and occupation?
A. Charles Reed, Police Officer, City of Miami Beach.

Q. How long have you been so employed?
A. Approximately five years.

Q. What are your duties as a Miami Beach police officer?

A. Mainly assigned to traffic enforcement on the Motorcycle Squad.

Q. On March 8th, 1967, were you on such duty?

A. Yes sir, I was.

Q. What shift were you on on that date?

A. I was working the afternoon shift, 4:00 P.M. to 12:00 P.M., assigned to the south zone.

Q. Did you on that day see the Defendant, Frank Conroy?

A. Yes sir, I did.

Q. Will you tell the court the circumstances in regard to your observation of the Defendant?

A. At approximately 8:10 P.M. I was proceeding southbound on Ocean Drive in the rear of a 1960 Chevrolet taxicab. At this time the vehicle appeared to be speeding. I obtained a mechanical clock on the vehicle of forty-three miles an hour in a posted twenty mile an hour zone. I followed the vehicle from 14th Street at this speed down to approximately 9th Street, when I had put on the red lights on my motorcycle. The vehicle, still not slowing down, got to approximately 8th Street, where he started decreasing speed. He made a right turn on 7th Street, kept on to the intersection of 7th Street and Collins Avenue, where he pulled into a Sinclair Station located on the southeast corner of this particular intersection.

Q. What happened then?

A. At this time I pulled in behind his cab, and I walked up to the car at this time. Mr. Conroy had already gotten out of the car, and before I could make any statement to him, his remark to me was, "what in the hell do you want me for". At this time I advised Mr. Conroy that I had been to the rear of his vehicle and clocked him at forty-three miles per hour in a twenty zone on Ocean Drive from 14th Street to 8th Street, and was going to issue a citation for speeding, and would like to see his driver's license. At this time Mr. Conroy produced a valid Florida driver's license to me. I then proceeded in filling out the ticket. During the entire time of filling out the ticket Mr. Conroy was very irate, stating that I was definitely wrong, that I couldn't have clocked him speeding on Ocean Drive due to the fact that he had previously seen me at the intersection of Lincoln Road and Collins Avenue, and therefore how could I have been behind him on Ocean Drive. When I got done finishing the ticket I turned to Mr. Conroy and asked him if he would sign the promise to appear portion of the ticket, stating at this time that it was not a plea of guilty or not guilty, it was merely a promise in the County accepting his signature that he would appear in court. Mr. Conroy then stated to me that he wasn't going to accept the ticket, and he refused to sign anything. I then advised Mr. Conroy that at my discretion that he get in his cab and follow me to the station, and post a twenty-five dollar guarantee bond for his court appearance.

He then repeated, he said, "I'm not accepting the ticket, and I'm not going anywhere with you", and with this, he walked off and into the gas station. I then followed him. He went over to the phone and said he wanted

to make a phone call to his attorney. I advised Mr. Conroy then that he was under arrest for the speeding charge, and would have to accompany me to the station, and I would have to therefore, if he refused to follow me, call for a squad car and a wrecker to impound his car, and a squad car with which to transport him to the station.

Mr. Conroy then picked up the telephone. At this time I then placed my finger on the receiver button, disconnecting the phone before he made the call, and advised him that he would have to go with me at this time, that he would be given ample time at the station to phone his attorney. He then slapped my hand away from the phone, and then put my arm on, grabbed Mr. Conroy's arm, took a hold of Mr. Conroy's arm, and advised him that he would have to come with me. With this, he pushed my hand away from him and shoved me back, stating that he was not going anywhere. I then took out my handcuffs and placed one of them on his left arm. Then I asked Mr. Conroy again if he would just put his arm in front of him, it would make it a lot easier, and he stated he wasn't going to do any of it.

We then got back outside. At this time Mr. Conroy was backed up to his cab, and I asked him if he would put his arm out again, again refusing to do so, and pulling away with the left hand that was already cuffed. It then became necessary for me to wrestle Mr. Conroy to the ground in order to finish cuffing his arms. After he was cuffed, I got to my motorcycle, called for assistance and for transportation down to the station, to which Officer Tom Davis responded, and Sergeant Dabney.

When they got on the scene, Mr. Conroy was placed in Officer Davis' vehicle, and transported to the station for booking. At the station the charge of resisting arrest and striking an officer by resisting arrest was placed on him.

Q. Now Officer Reed, who else was present there at the station when this incident occurred?

A. There was one other person present. He was the night attendant, Mr. Lee Meyers, who was later subpoenaed by this officer for appearance in court.

Q. What was the situation in regard to light or darkness at that time?

A. It was 8:10 in the P.M., and it was dark. The station lights were on.

* * *

Q. Before he started to use the phone?

A. This was prior to using the phone. This was after he was advised he was under arrest, and he refused to follow me down to the station in his cab. I would therefore have to call for a squad car.

Q. You were going to wait for the car?

A. Yes sir, we were going to wait for the car, but I hadn't called for the car yet.

Q. You were going to call them on your motorcycle by radio?

A. Yes sir.

Q. Not on the telephone?

A. No sir, I wasn't going to call on the telephone.

Q. What was the objection to his using the telephone?

A. The thing of it is there was no objection at the time, at the time actually that he was going to phone. The thing of it is he was given the opportunity at that time to either follow me, or I would have to call for the car. He made no indication at this time which he was going to do. He had told me earlier he would not go.

Q. Well, what was the objection to using the telephone?

A. He couldn't make the call from the station. I had to call for the car.

* * *

Q. You wrestled him to the ground?

A. Yes sir.

Q. Did you throw him on the ground, is that what you mean?

A. No sir.

Q. How did you do it, describe it?

A. I don't believe I'm physically able to pick Mr. Conroy up and actually throw him to the ground, as you stated. It was simply a matter of taking him down to the ground by tripping him up and taking him down to the ground. I had one hand, and it was a matter of just pulling him over with the tripping of the leg.

Q. Was he injured after you did that?

A. Yes sir, I believe he struck his head.

Q. He did strike his head?

A. Yes sir, I believe he did.

Q. When he hit the ground?
A. I believe that's when it happened, yes sir.

Q. Was any other part injured?
A. Not to my knowledge.

Q. Was he bleeding?
A. There was a slight cut over the eye.

Q. That's all you observed?
A. On him, yes sir. I was bleeding myself.

Q. From what?
A. From the handcuff cut. It cut me up through the thumb.

* * *

Q. Now, was he sitting down, or laying down, or was he just being pulled, so to speak?
A. He was pulling back from me, sir, I was trying to take him outside.

Q. Did he have his feet braced against your pulling him outside?
A. He was resisting by pulling back, whether he was braced or not. You don't have to brace yourself to pull back. I can pull back and not actually brace myself. I can pull back with my arms.

Q. In other words, he was just pulling back with his arms?
A. He was resisting, sir.

Q. You consider that resisting arrest?

A. This is resisting, yes sir, it is. I consider it as partly resisting arrest.

Q. Now, at the time you got him outside and had wrestled him to the ground, after that, did he continue to make any resistance at all?

A. No sir, at this time he was handcuffed.

* * *

BY MR. ROBBINS:

Q. Would you please tell the court your name and address?

A. My name is Lee Meyer, I live at 644 Lenox Avenue, Apartment #31.

Q. What type of work do you do, Mr. Meyer?

A. I'm employed by Bobby's Service Station at the corner of 7th and Collins, Miami Beach.

Q. What type of work do you do there?

A. Well, I'm the night attendant.

Q. Now, were you the night attendant on duty on the night of March the 8th, when there was an incident between Officer Reed and Mr. Conroy?

A. Yes, I was.

Q. Were you there when Mr. Conroy drove his cab into the station?

A. Yes, I was ready to service the cab, and I did continue to service it.

Q. Now, Mr. Conroy generally parks his cab there when he's not using it for use as a taxicab?

A. Yes sir.

Q. Now, do you recall Officer Reed driving up on that evening?

A. Yes, I recall the incident when Officer Reed came up there.

(Off the record discussion—Judge tells witness not to be nervous.)

Q. Now, do you recall Officer Reed coming up on that evening?

A. Yes, I saw him pull up on his bike.

Q. About what time was that, Mr. Meyer, if you recall?

A. Well, Mr. Conroy usually comes in every night about nine or nine thirty to service his cab, and he sometimes goes back out again. Sometimes he parks the cab and goes home.

Q. Now, what time was it on this particular evening, if you recall?

A. I couldn't definitely say, sir.

Q. Did you hear any conversation between Officer Reed and Mr. Conroy?

A. Yes, I heard part of the conversation which I did not pay much attention to. Officer Reed charged Mr. Conroy with going over the speed limit on Ocean Drive.

Q. What did Mr. Conroy say, if anything?

A. Well, Mr. Conroy said that he was not guilty of that because he usually obeys all rules and regulations of the City of Miami Beach.

Q. And what did Officer Reed say then?

A. Officer Reed insisted that he was exceeding the speed limit.

Q. And did Officer Reed then proceed to write a traffic ticket for him?

A. He certainly did.

MR. TRUSHIN: I object to him leading the witness.

THE COURT: Mr. Robbins, try to avoid leading the witness.

MR. ROBBINS: All right, sir.

THE COURT: I'll sustain the objection.

Q. MR. ROBBINS: What occurred after Officer Reed wrote the traffic ticket?

A. Well sir, to the best of my memory, Mr. Conroy turned his back and refused to take the ticket.

Q. Then what happened, if anything?

A. Well, Officer Reed insisted that he take the ticket. Mr. Conroy at that time went into my office and attempted to make a telephone call which Officer Reed did not want him to make.

Q. Now, do you recall anything that occurred between the time that Mr. Conroy refused to take the ticket, and the time that Mr. Conroy went into the station?

A. Well, Officer Reed followed Mr. Conroy into the station, and Mr. Conroy went to dial this number—

Q. Before this, Mr. Meyer, did Officer Reed say anything to Mr. Conroy after Mr. Conroy refused to take this ticket?

A. I don't recall, sir, definitely. I had customers coming back and forth, other cabs pulling in, and I can't recall anything, sir.

* * *

Q. MR. ROBBINS: After Mr. Conroy refused to take the traffic ticket that Officer Reed had written out, what did Officer Reed say to Mr. Conroy?

A. I can't recall, sir, because I had to watch the front of my station, and I couldn't give you an honest answer on that.

Q. You testified something about Mr. Conroy wanting to make a telephone call?

A. Yes, Mr. Conroy wanted to make a telephone call.

Q. Do you recall what his conversation was in regard to wanting to make the telephone call?

A. Well, Officer Reed said that Mr. Conroy could make a call at the station. Mr. Conroy insisted that it was nothing but a traffic violation he was charged with, and he had the rights of a citizen to make a phone call right there, because he hadn't been put under arrest yet.

Q. Now, Mr. Conroy said that, or you knew that he had not been put under arrest?

A. Well, I didn't hear that he was put under arrest, sir. Now, I'm busy in my station.

Q. Well now, I just wanted to straighten up in my own mind because you just said that Mr. Conroy had not been put under arrest yet. Now, was this part of the statement that Mr. Conroy said at that time, or is this your conclusion that he had not—

A. You're confusing me, sir.

Q. I'm sorry, I don't want to confuse you, Mr. Meyer. Did Mr. Conroy say, "I have not been put under arrest yet"?

A. No, Mr. Conroy didn't make that statement at all, and there was no indication that there was an arrest other than being given the ticket.

Q. Now, you had witnessed everything that had occurred up until this moment, and therefore you knew that there was no arrest up to this moment?

A. I don't know. I was busy in my station. I have telephone calls coming in, customers coming in, I can't tell you honestly.

Q. Well, all I'm trying to clarify in my own mind, Mr. Meyer, is you made a statement that Mr. Conroy had not been put under arrest yet, and I'm trying to find out what facts you observed to result in a statement like that?

A. Let me put it in my own words, sir.

Q. Yes sir, would you?

A. So there will be no confliction there. I assumed that when Officer Reed was going to put the cuffs on Mr. Conroy, my assumption was he would have to be told he was under arrest before the officer could put cuffs on, or try to put cuffs on. Now, that's my assumption, sir.

Q. And you heard everything that Officer Reed had said to him?

A. No sir, I didn't hear half of what went on. I assume it was just a deliberation between two parties, that's all.

Q. Well now, you made a statement, and I just would ask you to explain to me the statement that you made. You said Mr. Conroy had not been put under arrest yet. Now, what had you observed, and what had you heard to reach a conclusion—

A. To reach a conclusion, sir, was that Mr. Conroy asked me to try to make this telephone call for him. Now I evidently got the wrong number from Mr. Conroy. I did go into my phone, and I tried to call the party, but I was getting the wrong number. But while my back was turned, I don't know, I guess Officer Reed was trying to put the cuffs on Mr. Conroy.

Q. Now, you previously said that some customers came in the station that you had to fill gas in their vehicles. Did that occur during this time?

A. Well, there's cars in there all the time, sir.

* * *

Q. Prior to that time we never spoke?

A. Never, sir.

Q. We spoke then for just a couple of minutes to get acquainted?

A. Yes sir.

Q. I haven't talked to you since then?

A. No sir.

Q. You stated on direct examination that you feel the type of work you do requires a great amount of police protection, and you are indebted to the Police Department?

A. Yes sir, because my place is subject to burglary. I'm open twenty-four hours a day.

Q. You have known Mr. Conroy quite a while?

A. Yes sir, and I vouch for his character.

Q. You are more impartial than you would be in the normal circumstances? You are not partial to either side?

A. No sir, I can't say that I am.

Q. Tell us how many squad cars finally came to the scene?

A. As I stated before, I think it was five or six, sir. I saw this particular incident. They seemed to converge upon us in a matter of seconds.

Q. Did you observe Mr. Conroy at the telephone struggling with Officer Reed?

A. Sir, I couldn't classify it as a struggle. The way it looked to me, Mr. Conroy had the phone, and Officer Reed was trying to take it from him. The phone was dropped, and I picked it up.

Q. Up to that point you had seen no evidence, and heard nothing that led you to believe that Mr. Conroy was under arrest?

A. No sir, I couldn't say that I did.

Q. Did you hear anything to make you believe he was arrested at that point?

A. No sir.

Q. When did Officer Reed first attempt to put the handcuffs on him?

A. I can't tell you that. I was trying to call Mr. Weinberg.

Q. It was after Mr. Conroy had left the phone?

A. After both gentlemen were outside Mr. Conroy asked me to call Mr. Weinberg, and I didn't have the right number.

Q. And they both went out of the station before anything about the handcuffs occurred?

A. Yes sir.

Q. Officer Reed did not pull out the handcuffs in the station?

A. No sir.

Q. Did you observe any struggle going on outside by Mr. Conroy? I'm not speaking about what Officer Reed was doing, only Mr. Conroy. Was he struggling against Officer Reed?

A. Not that I can recall, no sir.

Q. Was he still discussing the matter?

A. There was conversation going on, but I didn't pay attention, sir.

Q. Did you observe Officer Reed strike Mr. Conroy at any time?

A. No sir, I cannot recall either of them throwing a punch, so to speak.

Q. Do you recall Officer Reed throwing Mr. Conroy to the ground?

A. No sir, I didn't observe that, if it happened.

Q. Did you observe Mr. Conroy bleeding afterwards, after Mr. Conroy had gone to the station and bailed himself out?

A. When he got back I parked his cab for him. I believe on his left temple he had a scrape as though he had scraped against the wall.

Q. About what time did he arrive back?

A. Sir, everything is so messed up, I don't know.

Q. Was it a couple of hours later?

A. No sir, I assume it was within the next half hour. He obviously bailed himself out immediately.

Q. I show you a picture, and ask you if this appears to be how Mr. Conroy looked when he returned to the station?

A. I would say so.

* * *

Q. MR. ROBBINS: How far away from the door were you?

A. It's my policy to write my tickets near the motorcycle. It was about ten feet. His car was pulled into the service ramp of the service station, and he ignored me and walked into the gas station.

Q. What did you say?

A. I told him he was under arrest, and would have to go to the station.

Q. When did you tell him that? When he walked into the gas station?

A. At the phone.

Q. When he walked in the door?

A. The phone is in the station.

Q. Was he at the phone when you told him?

A. He was on his way over there, and I told him you are under arrest, you have to post a bond. He said I'm not going, I will call my attorney.

Q. When he went to make the phone call did he offer you any resistance?

A. He brushed my hand away from the phone.

Q. What did you do?

A. I said you are going with me, and he pulled me back.

DEFENDANT'S MEMORANDUM OF LAW

IN THE MUNICIPAL COURT IN AND FOR CITY OF MIAMI BEACH, DADE COUNTY, FLA.

(Contained in Municipal Court Record)

* * *said that such conduct on the part of the prosecutor could not be countenanced and that under the authority of a number of recent cases in the United States Supreme Court, the foregoing erroneous and prejudicial conduct of the prosecutor would be sufficient grounds to reverse the judgment of conviction.

In **State v. Krozel,** supra, the court did not allow the conviction to stand in view of the prejudicial error of not permitting the defendant to consult with his attorney on the telephone.

When was Conroy actually arrested? Our Courts have listed the elements of arrest as follows:

1. "The elements of an arrest comprehend a purpose or intention to effect an arrest under a real or pretended authority, the actual or constructive seizure, or detention of the person to be arrested by the one having the present power to control him, communication by the arresting officer to the one whose arrest is sought of his intention or purpose then and there to make an arrest and an understanding by the person who is to be arrested that it is the intention of the arresting officer then and there to arrest and detain him." **Melton v. State,** Florida 1954, 75 So.2d 291; **Range v. State,** Fla.App. 1963, 156 So.2d 534 and Section 901.17 Florida Statutes, supra.

It is clear that the defendant was not under arrest at the time he attempted to make a phone call since these provisions had not been followed by the officer in attempting to arrest the defendant. Furthermore,

> "The mere stopping of an individual for interrogation by a police officer does not constitute an arrest." **Lowe v. State,** Fla.App. 3, 1966, 191 So.2d 303, 304 and cases cited therein.

The Defendant should have been permitted to call his attorney regardless of whether an arrest had been made or was about to be made by the police officer under the laws of the State of Florida and of the United States of America.

Question 2. What is the legal definition of the words comprising the charge which is the violation of Section 25-66 of the Code of the City of Miami Beach, Florida?

The charge against the defendant is that he "knowingly and wilfully" resisted, obstructed and/or opposed a police officer in the performance of his duties. The words "knowingly and wilfully" are defined by Black's Law Dictionary, Fourth edition, on page 1012 prejudice the defendant. But, since the defendant was seeking counsel and was entitled to counsel, and since the so-called violation of the Code is based upon the attempt to attain counsel, it must be construed that the arrest itself was illegal in that the officer had no right to arrest the defendant for seeking counsel, he was not resisting arrest by his threats, by his talk, as has been shown. He could

not resist arrest in this fashion, the officer was not afraid of him, did not dissist from his actions and therefore, there was no resistence offered. The only thing the officer did was to charge him with resisting arresting by attempting to call an attorney and this cannot be considered resisting arrest, the officer in fact, violated the fundamental right of the defendant to seek counsel as provided both by Florida Statutes and by the United States Constitution. Furthermore, it is quite clear that the defendant did not knowingly and wilfully oppose the officer in any fashion. He believed himself innocent and he attempted to call an attorney and in this fashion he was committing the crime according to the officer. If we were to consider this a crime, then we in effect are saying the right to have an attorney is a crime. The Court must find the defendant not guilty under the circumstances herein.

Respectfully submitted,

THEODORE M. TRUSHIN
Attorney for Defendant

ASSIGNMENTS OF ERROR IN CRIMINAL APPEAL

IN THE MUNICIPAL COURT IN AND FOR THE CITY OF MIAMI BEACH, DADE COUNTY, FLORIDA

Docket Case No. 129939

FRANK CONROY,
Defendant/Appellant

vs.

CITY OF MIAMI BEACH, FLORIDA,
Plaintiff/Appellee.

The Appellant in the above-styled cause assigns as error the following as being in violation of rights guaranteed to him under the constitution of the United States and of Florida:

1. The verdict was contrary to the law.

2. The verdict was contrary to the evidence.

3. The verdict was contrary to the law and evidence.

4. The Court erred in failing to direct a verdict for the defendant at the close of the prosecutions case, based upon the fact that the prosecution had failed to make a prima facie case.

5. The Court erred in finding the Defendant guilty of the charge after the conclusion of all the evidence.

6. The Court erred in finding that the Defendant was not entitled to make a telephone call to his attorney or to secure an attorney before being arrested.

7. The Court erred in finding that the Defendant had been arrested prior to attempting to make a telephone call to his attorney.

8. The Court erred in finding that the Defendant was resisting arrest or violating the ordinance involved herein by trying to make a telephone call to his attorney.

9. The Court erred in finding that the Defendant "knowingly" and "wilfully" resisted, obstructed or opposed the officer in the performance of his duties.

10. The Court erred in finding that the acts, subsequent to the arrest, by the Defendant, constituted resistence to arrest as set out in the charge.

11. The Court erred in finding that the Defendant obstructed justice by attempting to make a telephone call to his attorney.

12. The Court erred in finding that the Defendant obstructed justice by stating that he would not go with the officer during the progress of the arrest.

THEODORE M. TRUSHIN
Attorney for Defendant

I HEREBY CERTIFY THAT a true copy of the foregoing was mailed to Joseph A. Wanick, Attorney for the City of Miami Beach, Florida, 1130 Washington Avenue, Miami Beach, Florida, this____day of June, 1967.

ORDER OF AFFIRMANCE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DADE COUNTY CRIMINAL APPEAL NO. 6335 (Judge Popper)

FRANK CONROY

Appellant

vs.

CITY OF MIAMI BEACH, FLORIDA

Appellee

THIS CAUSE came on to be heard on the appeal of the Appellant, FRANK CONROY, and the Court having considered the briefs of the Appellant and the Appellee, as well as the brief of the American Civil Liberties Union of Florida, Amicus Curiae, and after hearing argument of counsel, and the Court being fully advised in the premises, it is

ORDERED AND ADJUDGED that the judgment of conviction and sentence of the Municipal Court of the City of Miami Beach, Florida, be, and the same is hereby affirmed.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 12 day of June, 1968.

DAVID POPPER
Circuit Judge

ORDER DENYING PETITION FOR REHEARING

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DADE COUNTY CRIMINAL APPEAL NO. 6335 (Judge Popper)

FRANK CONROY

Appellant

vs.

CITY OF MIAMI BEACH, FLORIDA

Appellee

This cause came on for hearing on the Appellant's Petition for Rehearing, and the Court having heard argument of counsel for the Appellant, as well as counsel for the American Civil Liberties Union of Florida, Amicus Curiae, and the Court being fully advised in the premises, the Court makes the following findings:

1. Due process of law and the right to a fair trial, as well as the right to counsel, as guaranted by the 14th Amendment to the United States Constitution, as well as Sections 8 and 12 of the Declaration of the Rights of the Florida Constitution, do not encompass any contsitutional right of a person to make a telephone call at the time of his arrest, but before being taken to the police station.

2. The trial Court was eminently correct in entering its judgment of conviction and sentence adjudicating that Defendant-Appellant resisted arrest as charged pursuant to the Code of the City of Miami Beach, Florida, by refusing to go to the police station with the police officer following his arrest.

It is thereupon, ORDERED AND ADJUDGED that Appellant's Petition for Rehearing be, and the same is hereby denied.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 18 day of July, 1968.

DAVID POPPER
Circuit Judge

PETITION FOR A COMMON LAW WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA THIRD DISTRICT

CASE NO. 68-826

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT:

* * * arrest in violation of the Code of the City of Miami Beach, Florida, or does he have a Constitutional right guaranteed by the Fourteenth (14th) Amendment to the United States Constitution as well as Section 8 and 12 of the Declaration of Rights of the Florida Constitution to call his attorney at that time without being guilty of resisting arrest by his attempt to make such call?

(c) Whether or not a Petitioner resists arrest in violation of the Code of the City of Miami Beach, Florida, by refusing to go to the police station voluntarily with the police officer following his arrest.

On these points of law the Circuit Court entered its Order of Affirmance herein sought to be reviewed, a decision and order in effect answering each point of law in the negative, contrary to petitioner's legal arguments and position.

6. The same three (3) points of law have been answered in the affirmative, i.e., in conformation with Petitioner's contentions by Federal decisions concerning the Fourteenth (14th) Amendment to the Constitution of the United States and said amendment guarantees the due process of law, the right to a fair trial, and the right to counsel; furthermore, Florida decision concerning Sections 8 and 12 of the Declaration of Rights of the Florida Constitution are also in conformation with Petitioner's contentions; thus, the decision and Order of the Circuit Court below deviates from essential requirements of law as follows, (note that the lettering of the subparagraphs hereunder corresponds to the lettering in paragraph No. 5):

(a) It was contrary to essential requirements of the law to affirm Petitioner's conviction of violating the Miami Beach ordinance because a Petitioner in custody is entitled to immediately consult with or be advised by his attorney when he has made such representation known to the officer arresting him, **State vs Burts,** (1964), 24 Fla. Supp. 88, **Escobedo vs. Illinois,** (1964), 378 U.S. 478, 12 L.Ed.2d 1977, 84 S.Ct. 1758, **State vs. Krozel,** (1963) 24 Conn. Supp. 266, 190 A.2d 61, **State vs. Domer,** (1964), 1 Ohio App.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

July Term, A.D. 1968
Thursday, December 19, 1968
CASE NO. 68-826

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on petition for writ of certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County (#6335) in said cause bearing date June 12, 1968 and the record having been considered, it is ordered that said petition be and the same is hereby denied.

A True Copy

ATTEST:
WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District
(SEAL)

cc: Theodore M. Trushin
Joseph A. Wanick
Richard Yale Feder and
Irma Robbins Feder
David Popper
E. B. Leatherman
/dlh

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

July Term, A.D. 1968
Wednesday, January 8, 1969

CASE NO. 68-826

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

Counsel for petitioner having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:
WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District
(SEAL)
cc: Theodore M. Trushin
Joseph A. Wanick
Richard Yale Feder and
Irma Robbins Feder

(THE FINAL ORDER IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CIRCUIT COURT FOR DADE COUNTY, FLORIDA)

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 38,232

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

> * * * at law entitled to practice in the Court of this state, shall at the request of the person arrested or of some one acting in his behalf, be permitted, forthwith upon his request to visit the person arrested and to interview him privately."

and conflicts with this Courts opinion in **Cash v. Culver,** (Fla. 1960), 120 So2d 590, wherein, "It was clearly pointed out (i.e. **Chandler v. Fretag,** 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4) that the right to be heard by counsel would be of little value if a defendant could be deprived of a reasonable opportunity to employ and consult with counsel. **Powell v. State of Ala.,** 287 U.S. 45, 53 S.Ct. 55, 58, 77 L.Ed. 158; **Hawk v. Olson,** 326 U.S. 271, 66 S.Ct. 116, 90 L.Ed. 61; **Avery v. State of Ala.,** 308 U.S. 444, 60 S.Ct. 119, 84 L.Ed. 455." In particular, conflict exists with this Court's opinion

in **Montgomery v. State,** (Fla. 1965), 176 So. 2d 331 cert.den. 86 S.Ct. (1955) 384 U.S. 1023, 16 L.Ed. 2d 1026 reh.den., 87 S.Ct. 22, 385 U.S. 892, 17 L.Ed. 2d 125, wherein this Court made the specific observation in stating that the "due process" requirement of the United States Constitution may be violated by failure to furnish counsel to an accused at a preliminary hearing and thereby later require reversal of a conviction when it said:

> "Not being an essential step in a criminal proceeding in this state, it is, a fortiori, not 'a critical stage'—although events that occur there may be of such a nature that the lack of counsel may result in a denial of due process of law. See **Harris v. State,** supra, 162 So.2d 262, citing **White v. State of Maryland,** 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed 2d 193."

In the instant case, the circumstances revealed that the res gestae of the crime specifically arose when petitioner sought the assistance of legal counsel. It thus became a "critical stage" of the proceedings under the circumstances herein since the police officer had no valid reason to delay petitioner in obtaining advise of counsel and in fact would have aborted the entire matter since petitioner would have then signed the ticket; the need to go to the station would not have existed and the alleged resisting arrest violation would not have occurred.

(c) The decision also conflicts with this Court's opinion in **Melton v. State,** (Fla. 1954), 75 So.2d 291 and the Second District Court of Appeal's decision in **Chance v. State,** (Fla. 1967), 2nd. DCA Fla. 1967, 202 So2d 825. This Court set out the elements of arrest in **Melton v. State, supra** and they were reiterated and interpreted by the Second District Court in **Chance v. State, supra,** in holding that a defendant was not under arrest because a police officer stopped his car, but only tooke place when he drew his revolver and handcuffed the defendant since the defendant only then realized that he was under arrest.

"An arrest involves the following elements: 1) the intention to effect an arrest under a real or pretended authority, 2) an actual or constructive detention of the person to be arrested by a person having present power to control the person arrested, 3) a communication by the arresting officer to the person being arrested of his intention then and there to effect an arrest, and 4) an understanding by the person being arrested that it is the officer's intention then and there to arrest and detain him. **City of Miami v. Nelson,** Fla.App. 1966, 186 So2d 535, 531 n.1; **Romanello v. State,** Fla.App. 1964, 160 So2d 529, 531; **Range v. State,** Fla.App. 1963, 156 So2d 534, 536; **Melton v. State,** Fla. 1954, 75 So.2d 291, 294." This Court has accepted the principle of law that the person not under arrest is entitled to an attorney whenever he requests same, **Escobedo v. Illinois,** (1964), 378 U.S. 478, 12 L.Ed. 2d 977, 84 S.Ct. 1758, and Florida cases subsequest thereto citing same. The record herein

clearly shows that neither the police officer nor the defendant considered the defendant under arrest until he was in the process of calling his lawyer.

8. Petitioner contends that although the **per curiam** decision and one sentence opinion of the district court of appeal do not set forth said court's reasons for denial of petition for writ of certiorari, the "record proper" (i.e., the Jurisdictional Record accompanying this petition) clearly demonstrates this Court's jurisdiction in view of the direct conflicts of law set forth in paragraph 7, particularly since the Circuit Court did set forth its reasons for affirming the conviction and sentence in denying the petition for rehearing filed therein, (R 2 & 3). See **Foley v. Weaver Drugs, Inc.**, Fla. 1965, 177 So.2d 221, 223-225. It is further submitted that under Florida Appellate Rule 4.5c(6) that if the Order of the District Court of Appeal is in conflict with even a **per curiam** denial decision by this Court, as in **Bush v. Youngblood,** 191 So.2d 559, there is sufficient conflict so as to create jurisdiction in certiorari. See **Fidelity Construction Company v. Arthur J. Collins and Sons, Inc.**, 130 So.2d 612, (1961). Further, there is a concurring special opinion of two justices in **Bush v. Youngblood, supra.** Even **obiter dictim** of this Court has been held to create the required conflict with other courts to give this Court jurisdiction under Florida Appellate Fule 4.5c(6), **Griffin v. Speidel,** 179 So.2d 569, (1965).

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In the Supreme Court of the United States

October Term, 1969

No. 597

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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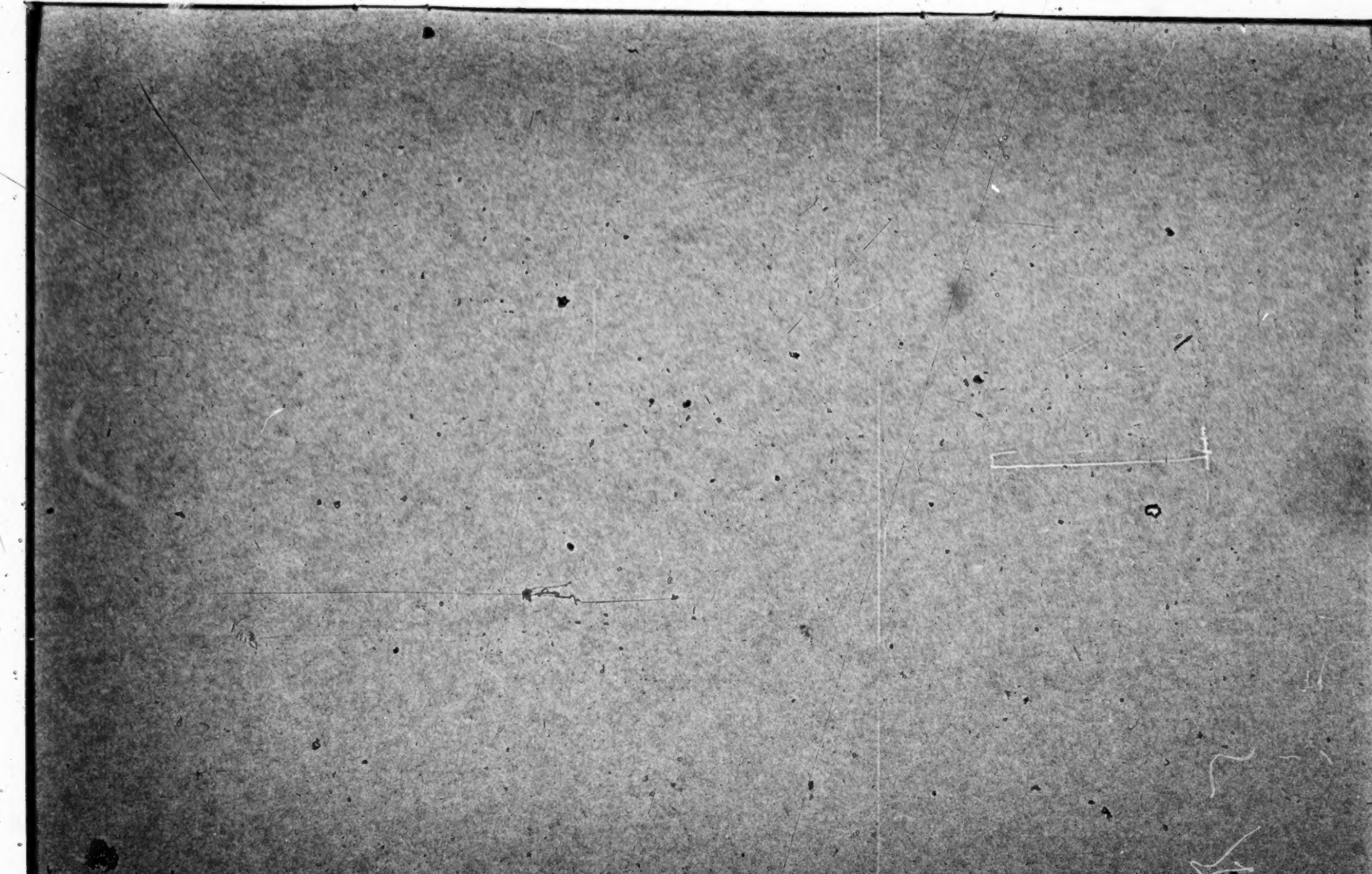

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In the Supreme Court of the United States

October Term, 1969

No. 597

FRANK CONROY,

Petitioner,

vs.

CITY OF MIAMI BEACH, FLORIDA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

INTRODUCTORY STATEMENT

Petitioner prays that a Writ of Certiorari issue to review a decision below of the Supreme Court of Florida. For the most part, the parties will be referred to by name or as they stand in this Court. The symbol "A" shall be used to designate the Petitioner's Appendix. The symbol "R" shall be used to specify the record which Petitioner's counsel informs us has been transmitted to this Court.

OPINIONS BELOW

The Opinion of the Municipal Court of the City of Miami Beach, Florida, is not reported, but the disposition of the cause appears at A-5.

The Order of Affirmance dated June 12, 1968, of the Circuit Court in and for Dade County, Florida, is not reported, but appears at A-29. Petitioner's timely Petition for Rehearing was denied on July 18, 1968, and appears at A-30-31.

The decision of the District Court of Appeal, Third District of Florida, is reported in memorandum form in 217 So.2d 164. It also appears at A-34. Petitioner's timely Petition for Rehearing was denied on January 8, 1969, and appears at A-35.

The decision of the Supreme Court of Florida dated May 9, 1968, is reported in memorandum form in 225 So.2d 910. It also appears at A-1. Petitioner's timely Petition for Rehearing was denied on June 16, 1969, and appears at A-2.

JURISDICTION

According to the Petitioner, he "believes" that jurisdiction is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

According to the Petitioner, the petition presents the following questions:

> "1. Whether or not a petitioner has a constitutional right guaranteed by the 14th Amendment to the United States Constitution to call his attorney at the time of his arrest but before being taken to the police station.
>
> "2. Whether, when the petitioner attempts to call his attorney immediately following his arrest, but before being taken to the police station, is he guilty of resisting arrest in violation of a municipal Code provision, or, does he have a constitutional right, guaranteed by the 14th Amendment to the U.S. Constitution to call his attorney at that time without being guilty of resisting arrest by his attempt to make such a call?
>
> "3. Whether or not petitioner has a right to resist an arrest by exercising a constitutional right guaranteed him by the 14th Amendment to the U.S. Constitution, by refusing to go to the police station voluntarily with the police officer following his arrest until such time as he would be allowed to telephone his attorney."

STATEMENT OF THE CASE

Petitioner's statement is argumentative and incomplete. The Respondent-City, therefore, restates the case as follows:

Petitioner was charged with violating Section 25-66 of the Code of the City of Miami Beach, Florida, on March 8, 1967, to wit:

> "Obstructing officers in exercise of duties. "did then and there knowingly and willfully, obstruct, or oppose a duly appointed, qualified, and acting police officer of the City of Miami Beach, Florida, in the lawful execution of a legal duty being performed by him, to wit: bringing subject to station to post bond on traffic violation, subject resisted and refused to accompany officer." (A-5)

Petitioner was found guilty as charged in the Municipal Court of the City of Miami Beach and was ordered to pay a fine of $50.00 plus $4.00 court costs, or serve ten days in the city jail (A-5).

Officer Charles Reed of the City of Miami Beach testified before the Municipal Court below that he observed the Petitioner on March 8, 1967, traveling at the rate of approximately 43 miles an hour in a 20 mile an hour zone from 14th Street and Ocean Drive southward (A-8). Thereafter, at a service station, on the same date, Officer

Reed informed the Petitioner that he was being charged with speeding and requested him to sign the appearance portion of the ticket explaining at the same time that such signature was merely a promise to appear in court and was not a plea of guilty in any way (A-9). Petitioner refused to sign the ticket, whereupon Officer Reed advised him that he was under arrest for speeding and that Petitioner would have to accompany him to the station in order to post an appearance bond (A-9). Petitioner responded "I'm not accepting the ticket, and I'm not going anywhere with you . . ." (A-9). Petitioner had been advised that he was under arrest (A 9, 10, 11). Petitioner refused to accompany the officer to the station (A 9, 10, 11). At this point, Petitioner walked away from Officer Reed and went into the office of the service station ostensibly to call his attorney (A 9, 10, 16). Officer Reed informed Petitioner that he would be permitted to call his attorney from the police station (A-10), which Petitioner also admitted. Petitioner physically picked up the telephone in order to make his call and Officer Reed placed his finger upon the receiver button (A-10). Petitioner then slapped the officer's hand away from the phone and a struggle ensued between Petitioner and the officer (A-10). After a great struggle, the officer handcuffed the Petitioner and restrained him until other officers were able to come to his assistance in order to take the Petitioner to the police station (A-10, 11).

Petitioner appealed his conviction to the Circuit Court, in and for Dade County, Florida, and the Circuit Court affirmed the conviction on June 24, 1968 (A-29). On July 18, 1968, the Circuit Court denied Conroy's Petition for Rehearing (A-2) stating: (contrary to what appears to be quoted material at Page 13 of Conroy's petition herein):

> "1. Due process of law and the right to a fair trial, as well as the right to counsel, as guaranteed by the 14th Amendment to the United States Constitution, as well as Sections 8 and 12 of the Declaration of the Rights of the Florida Constitution, do not encompass any constitutional right of a person to make a telephone call at the time of his arrest, but before being taken to the police station.
>
> "2. The trial Court was eminently correct in entering its judgment of conviction and sentence adjudicating that Defendnt-Appellant resisted arrest as charged pursuant to the Code of the City of Miami Beach, Florida, by refusing to go to the police station with the police officer following his arrest." (A 30, 31)

Petitioner sought a common-law writ of certiorari in the District Court of Appeal, Third District of Florida, to review the Circuit Court's affirmance. The Third District Court of Appeal's decision in *Conroy v. City of Miami Beach*, is reported in memorandum form in 217 So.2d 164 (Fla. 3dDist. 1969). The order below reads as follows:

> "This cause having heretofore been submitted to the Court on petition for writ of certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County (#6335) in said cause bearing date June 12, 1968 and the record having been considered, it is ordered that said petition be and the same is hereby denied." (A-34)

Petitioner's petition for rehearing (A-34) was denied by the District Court on January 8, 1969 (A-35).

Thereafter, pursuant to Art. 5, Sec. 4 *Fla. Const.* and Fla. App. R.4.5c(6), the Petitioner filed a Petition for Writ of Certiorari to the District Court of Appeal, Third District, seeking review of the decision of the District Court of Appeal before the Supreme Court of Florida on a "direct-conflict" basis.[1] The Supreme Court's decision in *Conroy v. City of Miami Beach*, is reported in memorandum form in 225 So.2d 910 (Fla. 1969). The order below reads as follows:

> "This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied." (A-1)

Petitioner's Petition for Rehearing was denied by the Supreme Court of Florida on June 16, 1969 (A-2).

---

[1]Fla. App. R.4.5c(6) provides in part:

> "Where any decision of a district court of appeal . . . (3) is in direct conflict with a decision of another district court of appeal or of the Supreme Court on the same point of law, petition may be filed with the Supreme Court to issue a writ of certiorari to review such decision."

This was the *sole* issue before the Supreme Court of Florida.

REASONS FOR DENYING THE WRIT

I. No substantial federal question is raised by the petition for writ of certiorari.

It has long been settled by this Court and really requires no citation of authority that this Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record that a substantial federal question is not only presented to this Court, but was presented for decision to the highest court of the state having jurisdiction. It is also necessary that the federal question be actually decided by the state court involved. See *Southwestern Bell Telephone & Telegraph Co. v. State of Oklahoma*, 303 U.S. 206, 58 S.Ct. 528, 82 L.Ed. 751 (1938); *Grisanti v. City of Cleveland, Ohio*, 371 U.S. 68, 83 S.Ct. 111, 9 L.Ed 2d 119 (1962); *Wetzel v. Ohio*, 371 U.S. 62, 83 S.Ct. 111, 9 L.Ed. 2d 26 (1962); *Seaboard Air Line Railway v. Watson*, 287 U.S. 86, 53 S.Ct 32, 77 L.Ed. 180 (1932). It is abundantly clear that the decision sub judice was based on non-federal grounds and these non-federal grounds furnished a proper basis to support the judgment of the Supreme Court of Florida.

In this cause it is respectfully submitted that no substantial federal question has been presented to this Court. In fact, Petitioner's assertion of a federal question appears to be unsubstantial as not to really require further argument. It is significant that the Petitioner is unable to *positively* point to any authority in support of their position.

II. The authorities relied upon by Petitioner militate most strongly against his contentions.

In the case at bar, Petitioner was never deprived of counsel. He was informed at the time of arrest that he could call an attorney from the police station, and Petitioner was represented at all stages hereof by counsel. Petitioner merely asserts that he had *the right to call counsel at the time of arrest on the street* — at a point which was not investigatory, absent "custodial interrogation" and which could hardly be considered "critical." In short, Petitioner presupposes a constitutional right *to call* counsel at the time of being stopped by police for a traffic offense on the street. *Cf.* Anno., *Right of Motorist Stopped by Police Officers for Traffic Offense to be Informed at that Time of His Federal Constitutional Rights Under Miranda v. Arizona*, 25 A.L.R. 3d 1076. Any authority for this contention is conspicuously absent from the Petitioner's Petition.

Petitioner's "string citation" set forth at pages 14, 15 and 16 of the petition are so inopposite as to hardly require response. Analysis of the cited cases reveal that they have no bearing on the issue here before the Court.

In *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), this Court held that an indigent charged with a felony under state law has a right, and under the 14th Amend., *U.S. Const.*, must be furnished legal counsel at public expense to represent and advise him at the time of the trial in a state court. *Gideon* has been extended through subsequent decisions, but not to the point of creating a right to call counsel at the time of arrest on

the street for a misdemeanor. *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. 2d 977 (1964), holds that an accused in a state prosecution was denied the assistance of counsel, and that no pretrial statement elicited by the police during interrogation might be used against him at his trial, where the police investigation, conducted prior to indictment, was no longer a general inquiry into an unsolved crime, but had begun to focus on a particular suspect and the suspect had been taken into police custody. In *Escobedo*, the police carried out a process of interrogation that lent itself to eliciting incriminating statements, the suspect had requested and been denied an opportunity to consult with his lawyer, and the police had not effectively warned him of his constitutional right to remain silent. In the case sub judice, Petitioner fails to argue that *Escobedo* is even remotely in point, but seeks comfort from the mere citation of the case.

Petitioner's reliance upon *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) is equally misplaced. There this Court held that in the absence of a suspect's intelligent waiver of his pertinent constitutional rights, the suspect, before any "custodial interrogation," must be warned in clear and unequivocal terms

(1) that he has a right to remain silent,

(2) that any statement he does make may be used as evidence against him,

(3) that he has a right to consult with, and have present prior to and during interrogation, an attorney, either retained or appointed, and

(4) that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Each of these four warnings must be given. Clearly Petitioner fails to argue *Miranda* in light of its holding.

In *Hamilton v. State of Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed. 2d 114 (1961), this Court promulgated the "critical stage" test in relation to the right to counsel. (It was a capital case where the Petitioner claimed that he had been denied counsel at the time of arraignment.) This Court concluded that the right to counsel under the 14th Amend., *U.S. Const.* arises at any "critical stage in a criminal proceeding." Petitioner's reliance upon *Hamilton* to create a right *to call* counsel from the street at the time of arrest is groundless.

A *denial* of certiorari in *Winters v. Beck*, 385 U.S. 907, 87 S.Ct. 207, 17 L.Ed. 2d 137 (1966), can hardly be considered authority to support the Petitioner. At issue was the scope of Gideon to misdemeanor cases. A question was raised as to the *right* to counsel, but not *when* counsel is to be provided.

In reversing a state court conviction, where the defendant appeared at trial and was denied a request for a continuance to obtain counsel, in *Chandler v. Fretag*, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4 (1954), this Court observed:

> "Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his own counsel was unqualified." 348 U.S. at 9.

Petitioner clearly enjoyed this right throughout this cause and makes no claim to the contrary.

Respondent fails to see the relevance of *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed. 2d 106 (1965). There this Court reversed a first degree murder conviction holding that the trial court's and prosecutor's comments on the defendant's failure to testify violated the self-incrimination clause of the 5th Amend., *U.S. Const.* The same may be said concerning the Petitioner's reliance upon *Douglas v. People of State of California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963). In *Douglas*, this Court held that indigent defendants were denied the equal protection of the law where the merits of the one appeal they had as a matter of right from their convictions were decided without the benefit of counsel, following a determination by the appellate court (pursuant to a California rule of criminal procedure) that appointment of counsel would be of no value to the defendants or the court. *Douglas* is not even remotely analogous to the case sub judice.

Respondent's reliance upon *Application of Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967) is totally without foundation. There, this Court held that a juvenile has the right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination. *Gault*, has nothing whatever to do with the case at bar.

It is clear that Petitioner gains no solace from his dependance upon *Wright v. State of Georgia*, 374 U.S. 284, 83 S.Ct. 1240, 10 L. Ed. 2d 349 (1963) and *Cox v. State of Louisiana*, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d 487 (1965). In *Wright*, this Court reserved convictions for

breach of the peace where there was no showing that the Negro Defendants, who had been ordered to leave a municipally owned park and who were thereafter charged with breach of the peace had *adequate notice* that their conduct, in peacefully playing basketball at the park, was prohibited by the breach of the peace statute. Of critical importance was the fact that the order of the police officers was *admittedly* based upon their intention to enforce racial discrimination in the park. Hence, the order was violative of the equal protection clause of the *U.S. Const. Wright* is certainly not applicable herein. In *Cox*, the defendant had been convicted of violating a Louisiana Statute punishing picketing "near" a courthouse. Permission had been given for demonstrators to meet, across the street from a courthouse, 101 feet from the courthouse steps. The Sheriff ordered the meeting dispersed based upon the defendant's remarks, which the Sheriff considered to be a breach of the peace. This Court held that the defendant's conviction could not be upheld on the basis of the dispersal order. First Amendment freedoms could not be at the mercy of such whim or caprice as the facts revealed. Defendant had the right to rely upon the permission given him under the facts presented. Both *Wright* and *Cox* can hardly even be considered persuasive herein.

Finding no comfort in the decision of this Court, Petitioner turns to three (3) state cases in desperation. *City of Tacoma v. Heater*, 409 P.2d 867 (Wash. 1966), involved a prosecution for driving under the influence of intoxicating liquor. The Defendant was convicted at trial and a Court reversed. Under the following facts, the majority held that the Defendant was deprived of counsel resulting in irreparable prejudice to his defense.

"The defendant was involved in a minor traffic accident. The officers who investigated the accident determined that the defendant was under the influence of intoxicants and took him to the city jail under arrest. The defendant denied that he was under the influence of intoxicating liquor. Upon arrival *at the jail*, the defendant requested permission to telephone his attorney, but was denied the right to do so.

"The police officers then proceeded to administer certain physical and coordination tests to the defendant to ascertain his sobriety. The defendant refused to take a chemical sobriety test. He repeatedly renewed his request to telephone his attorney, but was not permitted to do so because the police department's regulations permit officers to deny to a person charged with an offense involving intoxication the right to make a telephone call until after the expiration of 4 hours following his arrest.

"Immediately after the tests were administered, the defendant was charged with the offense of driving while under the influence of liquor. He was not permitted to call his attorney until 4:00 A.M. on the morning following his arrest. The defendant's attorney stated that if he had been called he would have arranged for a blood test to determine the defendant's condition." (Footnote omitted.) *Id.* at 868,869.

The majority rationalized its holding by finding the time immediately *after* the officers conducted their tests for sobriety, interrogated the defendant and charged the defendant to be a "critical stage" in the case. Therefore, the denial of the defendant's request to call counsel *at this point in time* prejudiced his preparation of a defense. In the case at bar, the very relief sought in *Heater* was granted by the officer. There was no interrogation, tests administered or holding of the defendant incommunicado pursuant to police regulation in the case at bar.

State v. Krozel, 24 Conn. Sup. 266, 190 A.2d 61 (Conn. App. 1963) is similar to *Heater*, supra. The defendant was charged and convicted of operating an automobile under the influence of intoxicating liquor. On appeal, it was held that the denial of permission to the defendant, who was capable of using the telephone and who had the ability to pay for legal assistance, to telephone his wife and lawyer from the police headquarters *after* he had been interrogated by state troopers and *after* he had been charged, constituted a denial of assistance of counsel. As in *Heater*, supra, the refusal was based upon a four (4) hour waiting period for the use of the telephone following arrest for intoxication. Respondent's comments concerning *Heater*, supra, are definitely applicable here.

Lastly, Petitioner relies upon *Briggs v. State*, 367 S.W.2d 750 (Ark. 1963), a "sit-in" case. There, the Court found that some of the defendants had not unlawfully refused to leave an establishment since there was no refusal to leave at the request of the management or of police officers acting in compliance with a request from the management. It is abundantly clear that *Briggs* has nothing whatsoever to do with the issue here before the Court.

III. Petitioner merely seeks another appeal.

Petitioner has not stated the "Questions Presented" or the "reasons" for Granting the Writ with the required "accuracy, brevity, and clearness" pursuant to Supreme Court Rule 23(4). The Petitioner is simply seeking to have this Court re-examine the proceedings below in the light of an appeal to this Court. It is submitted that this is not permitted.

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari to the Supreme Court of Florida should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida, was mailed to the Attorney for the Petitioner, THEODORE M. TRUSHIN, 420 Lincoln Road, Miami Beach, Florida 33139, this 9th day of October, 1969.

/s/ Harris J. Buchbinder

HARRIS J. BUCHBINDER